# National Labor Relations Board Weekly Summary of



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|                         |                        |                     |

September 4, 2009 W-3224

## CASES SUMMARIZED VISIT WWW.NLRB.GOV FOR FULL TEXT

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Press Release (R-2702): Mark Carissimi is Appointed NLRB Administrative Law Judge

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The Fremont-Rideout Health Group d/b/a Fremont Medical Center and Rideout Memorial Hospital (20-CA-34194, 34227; 354 NLRB No. 68) Yuba City and Marysville, CA, Aug. 27, 2009. The Board adopted the administrative law judge's finding that the Respondent-Employer violated Section 8(a)(5) of the Act, by withdrawing recognition from the Union, at a time when the Union retained continued majority support among unit employees and by, subsequently, making unilateral changes to wages, health premium contributions, health insurance deductibles, the retirement plan, the leave policy, Emergency Department procedures, and the past practice of providing Union representatives access to the Respondent's facilities. Member Schaumber joined in finding the violations for institutional reasons, as the findings are not inconsistent with extant precedent. Member Schaumber noted that Levitz Furniture Co. of the Pacific, 333 NLRB 717 (2001), cannot fairly be read to create an affirmative obligation on a union, to notify an employer of evidence that might negate the employer's evidence of a union's loss of majority support. He left for another case, whether such a disclosure by a union ought to be imposed and under what circumstances. The Board also adopted the judge's affirmative bargaining remedy. In doing so, the Board discussed the D.C. Circuit's requirements for an affirmative bargaining order and explained that such an order is warranted on the facts of this case. [HTML] [PDF]

(Chairman Liebman and Member Schaumber participated.)

Charges filed by California Nurses Association; complaint alleged violations of Section 8(a)5. Hearing at Marysville, Feb. 23-24, 2009. Adm. Law Judge William No. Cates issued his decision April 28, 2009.

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Regal Health & Rehab Center, Inc., (13-CA-44481 et al.; 354 NLRB No. 71) Oak Lawn, IL, Aug. 28, 2009. The Board adopted the administrative law judge's finding that the Respondent committed numerous Section 8(a)(1) of the Act violations when its director of nursing threatened employees with job loss and unspecified reprisals, promised employees a reward for surveillance of other employees' concerted activities, created the impression that employees' union activities were under surveillance, interrogated employees about their union activities, threatened to blackball employees for engaging in union activities, and threatened employees with the futility of selecting the Union. The Board also agreed with the judge that the Respondent violated 8(a)(3) and (1) by discharging three licensed practical nurses (LPNs). [HTML] [PDF]

Finally, the Board agreed with the judge's recommended *Gissel* bargaining order. The Board relied on the above violations as well as on the judge's unexcepted-to finding that the Respondent violated 8(a)(3) and (1) by altering the job duties of LPNs, in order to prevent them from selecting the Union as their collective-bargaining representative. The Board found that this unlawful attempt to remove LPNs from the bargaining unit had a "tendency to undermine the majority strength and impede the election processes." *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969); see also *Regency Manor Nursing Home*, 275 NLRB 1261, 1261 (1985).

(Chairman Liebman and Member Schaumber participated.)

Charges filed by Service Employees International Union Healthcare, Local 4; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Chicago, May 27-30, 2008. Adm. Law Judge Margaret G. Brakebusch issued her decision Oct. 6, 2008.

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### **DECISIONS OF ADMINISTRATIVE LAW JUDGES**

All Seasons Climate Control, Inc. (Sheet Metal Workers Local 33 of Northern Ohio) Norwalk, OH, Aug. 24, 2009, 8-CA-37931, 38079, JD-38-09, Judge Ira Sandron

Speciality Hospital of Washington-Hadley, LLC (1199 SEIU Healthcare Workers East, MD/DC Division) Washington DC, Aug. 26, 2009, 5-CA-33522, JD-39-09, Judge Eric M. Fine

Kohler Co. (Individuals) Searcy, AR, Aug. 26, 2009, 26-CA-22733, 22744, JD(ATL)-21-09, Judge Michael A. Marcionese

*Trump Marina Associates, LLC, Trump Marina Casino Resort* (Auto Workers) Atlantic City, NJ, Aug. 27, 2009, 4-CA-36528' JD-37-09, Judge Robert A. Giannasi

Mastec of North America, Inc. (Communications Workers Local 3871) Kingsport, TN, Aug. 28, 2009, 10-CA-37586, 37669, JD(ATL)-22-09, Judge Margaret G. Brakebusch

*United Kiser Services, LLC* (Construction and General Laborers Local 1329) Norway, MI, Aug. 28, 2009, 30-CA-18129, 30-CB-5352, JD-40-09, Judge Bruce D. Rosenstein

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### NO ANSWER TO COMPLAINT

(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Shasta Regional Medical Center, LLC (SEIU United Healthcare Workers-West and United Public Employees Union Local 792) (20-CA-34236, 34237; 354 NLRB No. 65) Redding CA, Aug. 24, 2009. [HTML] [PDF]

Thoele Asphalt Paving, Inc. (Teamsters Local 682) (14-CA-29453; 354 NLRB No. 69) St. Charles, MO, Aug. 27, 2009. [HTML] [PDF]

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# NO ANSWER TO COMPLAINT AND COMPLIANCE SPECIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file a timely answer to the complaint and compliance specification.)

*Dodge Printing, LLC* (Graphic Communications Conference Local 259-M) (3-CA-27068; 354 NLRB No. 67) Utica, NY, Aug. 26, 2009. [HTML] [PDF]

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### **TEST OF CERTIFICATION**

(In the following case, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

Contemporary Cars, Inc. d/b/a Mercedes-Benz of Orlando (Machinist) (12-CA-26377; 354 NLRB No. 72) Maitland, FL, Aug. 28, 2009. [HTML] [PDF]

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# UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following case, the Board considered exceptions to Report of Hearing Officer)

# ORDER REMANDING PROCEEDING TO ADMINISTRATIVE LAW JUDGE

Good Samaritan Hospital, Los Angeles, CA, 31-RD-1555, Aug. 27, 2009 (Chairman Liebman and Member Schaumber

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(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

### DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

Waste Management of Ohio, Inc., Chillicothe Hauling Co., Chillicothe, OH, 9-RD-02191, Aug. 25, 2009 [setting aside election conducted July 2, 2009]

Meadwestvaco Corp., Covington, VA, 11-RC-6684, Aug. 26, 2009 [granting Petitioner's request to withdraw exceptions and setting aside election conducted March 12, 2008]

### **DECISION AND CERTIFICATION OF REPRESENTATIVE**

Artex Painting & Decorating, Pittsburgh, PA, 6-RC-12673, Aug. 26, 2009

Adamar of New Jersey, Inc., d/b/a Tropicana Casino and Resort, Atlantic City, NJ, 4-RC-21542, Aug. 27, 2009

# DECISION, ORDER [granting Petitioner's request to withdraw its exceptions], AND CERTIFICATION OF RESULTS OF ELECTION

Harding and Hill, Inc. d/b/a Harding's Friendly Market, Plainwell, MI, 7-RC-23206, Aug. 24, 2009

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(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Aimbridge Employee Service Corp., d/b/a Aloft Chicago O'Hare, Rosemont, IL, 13-RC-21849, Aug. 25, 2009 (Chairman Liebman and Member Schaumber)

Western Postal Service, Inc., Los Angeles, 21-RC-21112, 21113, Aug. 25, 2009

(Chairman Liebman and Member Schaumber)

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### Miscellaneous Board Decisions and Orders

# **ORDER** [affirming Regional Director's administrative dismissals of petitions]

- E.B. Eames Co., Inc., San Francisco, 20-RM-2869, Aug. 25, 2009 (Chairman Liebman and Member Schaumber)
- E.B. Eames Co., Inc., Kent, WA, 19-RM-2245, Aug. 25, 2009 (Chairman Liebman and Member Schaumber)
- E.B. Eames Co., Inc., Los Angeles, CA, 21-RM-2675, Aug. 25, 2009 (Chairman Liebman and Member Schaumber)
- E.B. Eames Co., Inc., Denver, CO, 27-RM-683, Aug. 25, 2009 (Chairman Liebman and Member Schaumber)
- E.B. Eames Co., Inc., Las Vegas, NV, 28-RM-617, Aug. 25, 2009 (Chairman Liebman and Member Schaumber)
- Springs Global US, Inc., Sardis, MS, 26-RM-475, Aug. 25, 2009 (Chairman Liebman and Member Schaumber)

# ORDER [denying Union's request for review of Regional Director's administrative dismissal of petition]

First Colonie/Desmond Hotel, Albany, NY, 3-RM-790, Aug. 25, 2009 (Chairman Liebman and Member Schaumber)

# CERTIFICATION OF REPRESENTATIVE AS BONA FIDE UNDER SECTION 7(B) OF THE FAIR LABOR STANDARDS ACT OF 1938

City of Highland, Highland, IL, 14-WH-5, Aug. 27, 2009

ORDER [denying Employer's and Petitioner's requests for review of Regional Director's administrative dismissal, Employer's request for review, and Employer's motion to consolidate petition]

Sage Hospitality, LLC, d/b/a The Blackstone Hotel, Chicago, IL, 13-RD-2606, Aug. 27, 2009 (Chairman Liebman and Member Schaumber)

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